

NPS Topics – Track A
Tribal Programs Without TAS

Assessment Reports and Management Program Plans



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Outline

- Background on CWA Section 319
- Treatment as a State: Basic Steps
- NPS Assessment Reports & Mgmt Plans
- 319 Competitive Funding Process

STATUTORY OVERVIEW

- CWA Section 319 requires states to prepare nonpoint source water pollution assessment reports and management programs. It also includes a grant program to assist in implementing the approved management program.
- CWA Section 518 says that Tribes may be treated in the same manner as a state for purposes of Section 319 if they meet certain conditions.

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Some Interesting Section 319 Program Facts

- From 1997 to 2007, Tribes eligible to participate have increased from **11** to **137** (all Regions except 3)
- Tribes eligible to participate represent about 75 percent of all tribal land, approximately 40 million acres

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319-Eligible Tribes

- Region 1: 5
- Region 2: 1
- Region 4: 4
- Region 5: 6
- Region 6: 9
- Region 7: 1
- Region 8: 15
- Region 9: 73
- Region 10: 23



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GRANT ELIGIBILITY

- To be eligible for a Section 319(h) grant, a Tribe will need ALL of the following:
 1. Approved Assessment Report (Section 319 (a))
 2. Approved Management Program (Section 319(b));
 3. Approved application for "treatment in the same manner as a state." (Section 518 and 40 CFR 35.633).



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What are the “treatment as a state” requirements of the CWA?

- **Under Section 518 of the Clean Water Act, the tribe must show that it:**
 - Is federally recognized by the Interior Secretary
 - Has a governing body carrying out substantial governmental duties and powers over a reservation
 - Is proposing to carry out functions that pertain to the management and protection of water resources within a reservation and has the authority to do so
 - Is reasonably expected to be capable of carrying out the functions of an effective NPS program

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TAS APPLICATION

- Federal Recognition (e.g. Federal Register Notice).
- Governing body carrying out substantial governmental duties and powers. This could include:
 - Description of form of tribal government.
 - Description of governmental functions currently performed.
 - Source of governmental authority, such as tribal constitution, by-laws etc.
- Functions to be exercised by the Tribe pertain to the management and protection of water resources” held by the Tribe or “otherwise within the borders of an Indian reservation.”
- The Tribe is reasonably expected to be capable of carrying out the NPS program.

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TAS Step 1: Tribe submits the TAS application to US EPA

Step	Description	Responsibility
1A	Pre-application discussions and technical assistance (if appropriate)	Joint Tribe-EPA
1B	EPA review of pre-application materials (if requested)	
1C	Tribe submits application to EPA	
1D	EPA initial review and request for additional information (as appropriate) as soon as practicable.	EPA (Region) ³
1E	Tribe submits additional information (if requested)	Tribe

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Step 2: Comment period

Step	Description	Responsibility
2A	EPA notifies appropriate governmental entities and the public (within 30 days after receipt of a tribal application that is ready for review)	EPA (Region)
2B	Comment period (30 days) ⁴	Commenters
2C	Within 45 days of the close of the comment period, EPA assembles comments, provides them to the tribe, and discusses a tentative schedule and next steps	EPA (Region)
2D	Tribe responds to comments (if any)	Tribe

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Step 3: EPA Review

Step	Description	Responsibility
3A	EPA reviews comments and tribal response (if any)	EPA (Team)
3B	Within 90 days, to the extent practicable, of the close of the comment period, EPA discusses the need for any additional information with the tribe (as needed)	EPA (Region)
3C	Tribe provides additional information (if requested)	Tribe

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Step 4: Proposed Findings of Fact (if needed)

Step	Description	Responsibility
4A	EPA reviews comments, tribal response to comments (if any), and additional information (if any)	EPA (Team)
4B	EPA prepares a draft proposed Findings of Fact	EPA (Team)
4C	Tribe provides comments, if any, on draft proposed Findings of Fact	Tribe
4D	EPA issues proposed Findings of Fact and notifies appropriate governmental entities ⁵ and the public	EPA (Region)
4E	Comment period (30 days) ⁶	Commenters
4F	Within 45 days of the close of the comment period, EPA assembles comments, provides them to the tribe, and discusses a tentative schedule and next steps	EPA (Region)
4G	Tribe responds to comments (if any)	Tribe

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Step 5: Final Decision

Step	Description	Responsibility
5A	EPA prepares decision document, response to comments	EPA (Team)
5B	EPA regional official signs decision document and notifies the tribe ⁷	EPA (Region)

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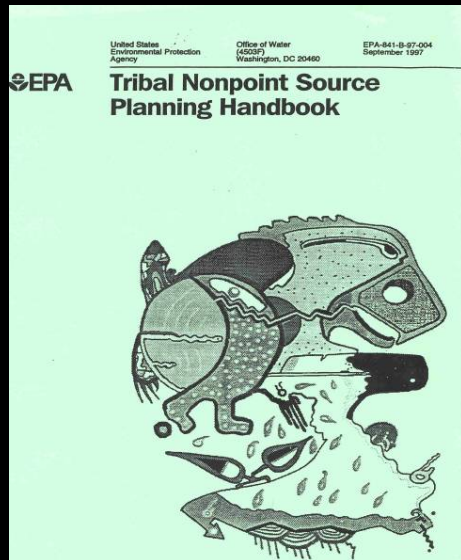
NPS Assessment Report and Management Program

- Enables Tribes to identify NPS effects on water quality (ie. via CWA 106 monitoring data)
- Enables Tribes to determine NPS pollution causes
- Tribes rank NPS-affected waterbodies by impairment
- Proposes solutions to address identified NPS
 - Best Management Practices (BMPs)
 - Other Activities



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NPS Planning Handbook



- Use the NPS Planning Handbook as your guide
- Work with your Project Officer for more assistance

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NPS Assessment Report

A tool to help identify:

- Water quality problems
- Sources of NPS pollution
- Existing Best Management Practices (BMPs)
- Programs and methods to control NPS pollution



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Nonpoint Source Assessment Report: Components (15)

- Cover
- Table of Contents
- Overview
- Introduction
- Methodology
- Land Use Summary
- Surface and Ground Water Quality Summary
- Results
- Discussion
- Selection of Management Practices
- Nonpoint Source Control Programs
- Conclusions
- References
- Appendices
- Acronym List

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Sample Assessment Report Checklist

OVERVIEW:

- Purpose of report
- Explain need for NPS assessment report
- General summary of analysis to follow

INTRODUCTION:

- Goals and objectives of NPS Assessment Report

METHODOLOGY:

- Describe how and where the data for the analysis of the NPS sources of pollution were obtained
- Identify any uncommon software or evaluation techniques
- Describe how thoroughly the study was conducted; any assumptions made in the analysis
- Describe any classifications/abbreviations made for assessment
- Describe types of sampling and purpose of sampling

LAND USE SUMMARY:

- Describe in general, the existing conditions on the tribal lands
- Include map
- Describe land uses and socioeconomic conditions

SURFACE AND GROUND WATER QUALITY SUMMARY:

- Thoroughly describe the existing conditions of the tribal waters
- Map of waters with complete description
- Water hydrology and quality
- Existing NPS reduction program for tribal lands identified

RESULTS:

- Present available scientific information related to NPS pollution on tribal lands
- Provide data table for waters
 - Name of waterbody, size/length, pollutant, severity of impairment
- Discuss each major type of water quality parameter or pollutant

RESULTS (continued):

- Analyze data according to category of NPS pollution
- Identify waterbodies affected by each category

DISCUSSION:

- Discuss info presented in "Results" section
- Identify categories of NPS pollution that are causing the majority of impaired water uses rank them on impairment

SELECTION OF BMPS:

- Purpose: identify the established process for selecting BMPS
 - (1) core participation (mission statement)
 - (2) public participation and government coordination
 - (3) specific programs (contacted for BMPS assistance)
 - (4) Existing BMPS (organized by category of NPS pollution)
 - (5) Pollution reduction - description of process

NPS CONTROL PROGRAMS:

- For each category of NPS pollution, identify and describe all available programs for controlling NPS pollution

CONCLUSIONS:

- Provide a summary of the key findings of NPS assessment report and list special concerns
- Identify the category(ies) of NPS that is most detrimental and will be targeted in 319 program

REFERENCES:

APPENDICES:

- Acronym List

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Nonpoint Source Assessment Report: Overview

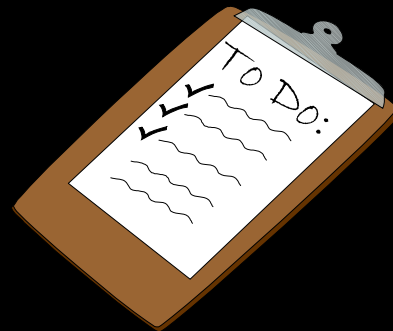
- Purpose of Report
- Explain need for NPS Assessment Report
- A general summary of analysis to follow



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Nonpoint Source Assessment Report: Introduction

- State the goals of report
 - General statement of purpose
- State the objectives of report
 - Specific measurable action

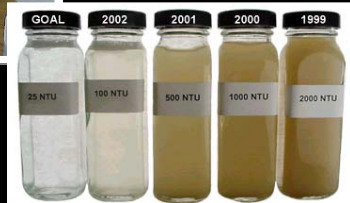


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Nonpoint Source Assessment Report: Methodology

Describe:

- How and where were the data obtained (ie., CWA 106)
- How was the study conducted
- Any assumptions made in analysis
- Any uncommon software or evaluation techniques



Nonpoint Source Assessment Report: Land Use Summary

Describe:

- Existing condition of tribal lands
- Land uses and socioeconomic conditions
- Include Maps



Nonpoint Source Assessment Report: Surface and Ground Water Quality Summary

- Describe existing conditions of tribal waters
 - Water hydrology and quality (recommend using information from CWA 106 monitoring program)
- Describe existing NPS reduction programs
 - Example: Ranchers provide alternate water sources for cattle instead of watering in creeks
- Map of waters
 - Use same map from TAS application

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Nonpoint Source Assessment Report: NPS Control Programs

For each category of NPS pollution, identify and describe all available methods and programs

Existing Agriculture BMPs by Nonpoint Source Category					
NPS Category	Nonpoint Source	NRCS Conservation Practice Standards		Partners	Potential Funding
Hydrologic & Habitat Modification	Historic Overgrazing, Erosion & Habitat Destruction & Natural Geologic	322	Channel Vegetation	Tribal EPA/NRCS	CWA 319
		390	Riparian Herbaceous Cover	Tribal EPA/NRCS	CWA 319
		395	Stream Habitat Improvement & Management	Tribal EPA/NRCS/USFW/University	CWA 319/USFW
		584	Stream Channel Stabilization	Tribal EPA/NRCS	CWA 319

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Nonpoint Source Assessment Report: Results

Present data information*
related to NPS pollution on
tribal lands:

1. Surface and ground water quality
2. Major water quality pollutants
3. Affected waterbodies

*Recommend using tables



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Nonpoint Source Assessment Report: Discussion

- Discuss all information presented in the "Results" section
- Identify categories of NPS pollution that are causing the majority of impaired water uses
 - Rank them by impairment



Nonpoint Source Assessment Report: Selection of Best Management Practices (BMPs)

Purpose: Identify the established process for selecting Best Management Practices (BMPs)

1. Core participants and mission statement
2. Public participation and government coordination
3. Specific programs (who you contacted for assistance with BMPs)
4. Existing BMPs (organized by categories of NPS pollution)
5. Pollution reduction—description of process

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Nonpoint Source Assessment Report: Conclusions

- Summarize key water quality and NPS pollution findings
- List special concerns
- Identify the most detrimental categories of NPS pollution



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Nonpoint Source Management Program

- A multiyear strategy document designed to bring NPS pollution under control
- Describes how the Tribe intends to correct or prevent existing or potential NPS problems identified in the Assessment Report
- Identifies reservation-wide and watershed-level projects to implement management practices for pollution prevention

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Nonpoint Source Management Program

- Specifically break down discussion in program by each NPS problem area
 - What water quality parameters are affected by the NPS pollution?
 - What BMPs should be used to address the NPS pollution problem? Will the selected BMPs improve the water quality?
 - How much funding is needed to implement selected BMPs?
 - What kind of technical assistance should be used in implementing the BMPs?

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Nonpoint Source Management Program: Components (9)

- Cover
- Table of Contents
- Overview
- Introduction
- Management Program Summary
- Management Program
 - Implementation program
 - Budget plan
- Existing Authorities and Programs
- References
- Appendices



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Sample Management Plan Checklist

OVERVIEW:

- State the purpose of the document and explain the need for a NPS management program for tribal lands:
- Provide a summary of major conclusions of the management program:

INTRODUCTION:

- Describe the goals and objectives of the NPS source management program:
- Present a detailed description/listing of steps used in identifying NPS source problem areas, priority waterbodies, and BMPs solutions (basically a concise summary of the assessment report)

MANAGEMENT PROGRAM SUMMARY:

- This section of the report should be organized by the NPS pollution categories that are identified as priorities in the assessment report and will be addressed in the management program.
- BMPs identified for each category form subsections, include milestones for each section of plan (presented in tabular form)
- For each NPS source pollution category provide:
 - (1) brief introductory paragraph describing nps source, as well as problems and needs associated with the source
 - info on primary pollutants, % of land use associated with NPS pollution category
 - (2) identify specific short-term goals and objectives

MANAGEMENT PROGRAM SUMMARY (continued):

- (3) For each activity (BMP), determine (if possible) and include supporting text for
 - lead agency
 - cooperating agency
 - funding schedule
 - waterbodies by BMPs
 - any impacts on ground water supply
 - implementation schedule and milestones
- (4) Identify any additional, long-term objectives for nps category

EXISTING AUTHORITIES AND PROGRAMS

- identify and describe any tribal or federal laws or programs that address NPS pollution and activities associated with each description of specific programs (in addition to 319) for money and technical assistance at tribal, local, state, or federal level
- define various roles of each:

REFERENCES:

APPENDICES:

- any additional info?

ACRONYM LIST

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Nonpoint Source Management Program: Overview

- State purpose of the document
 - Brief summary
- Explain need for NPS Management Program for Tribal Lands
 - Discuss findings from NPS Assessment Report
- Provide summary of major conclusions of management program
 - What are the most detrimental NPS problems to be addressed? What BMPs should be implemented?

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Nonpoint Source Management Program: Introduction

- Describe goals and objectives of NPS Management Program
- Present a detailed description/listing of steps used in identifying
 - NPS problem areas
 - Priority waterbodies
 - BMPs Solutions



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Nonpoint Source Management Program: Management Program Summary

- Identify the program's legal authority
- Identify the program's administering agency (ie., WQ Dept)

- Explain how the program is organized
- Explain how each component will be funded



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Nonpoint Source Management Program: Management Program

For each NPS pollution category provide:

1. Brief introductory paragraph describing NPS source to be addressed
 - Problems associated with NPS source
 - Information on primary water quality pollutants
 - Percentage of land use associated with NPS pollution category
2. Identify short-term goals and objectives to address the NPS problem

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Nonpoint Source Management Program: Management Program (continued)

3. For each NPS pollution category, determine (if possible) and include supporting text for:
- Specific BMPs to implement
 - Priority watersheds or critical areas to address
 - Expected water quality improvements from BMP implementation
 - Lead agency to implement BMP
 - Cooperating agencies to assist with BMP implementation
 - Public outreach (Information and education needs on why implementing BMPs)
 - Funding schedule and budget plan for BMPs implementation
 - BMP implementation schedule and milestones

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Nonpoint Source Management Program: Management Program (continued)

Agriculture Milestones

Activity	Year 1	Year 2	Year 3	Year 4	Year 5
Demonstration – winter grazing and feeding on Coyote Creek	X				
Implement 4 grazing BMPs on range units 9 and 10 on Little Fox Creek		X			
Monitor range units 9 and 10 for water quality changes		X	X	X	X

Silviculture Milestones

Activity	Year 1	Year 2	Year 3	Year 4	Year 5
Stabilize abandoned logging roads		X	X	X	X

Nonpoint Source Management Program: Management Program (continued)

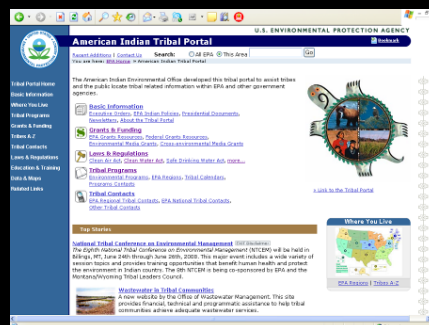
■ Funding schedule/budget plan

ACTIVITY		FUNDING SOURCE						
Year 1	Est. Cost	Tribe	319	106	GAP	SRF	BIA	NRCS
Activity 1	\$\$	\$	\$	\$	\$	\$	\$	\$
Activity 2	\$\$	\$	\$	\$	\$	\$	\$	\$
Activity 3	\$\$	\$	\$	\$	\$	\$	\$	\$
Year 2	Est. Cost	Tribe	319	106	GAP	SRF	BIA	NRCS
Activity 1	\$\$	\$	\$	\$	\$	\$	\$	\$
Activity 2	\$\$	\$	\$	\$	\$	\$	\$	\$
Activity 3	\$\$	\$	\$	\$	\$	\$	\$	\$
Year 3	Est. Cost	Tribe	319	106	GAP	SRF	BIA	NRCS
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Year 5	Est. Cost	Tribe	319	106	GAP	SRF	BIA	NRCS

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Nonpoint Source Management Program: Existing Authorities and Programs

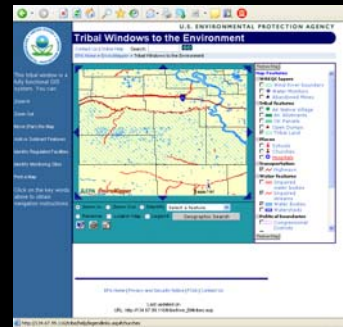
- Identify and describe any tribal or federal NPS pollution laws or programs (ie., Water Quality Ordinances)
- Describe any specific grant programs (in addition to CWA 319) that provide financial assistance or resources that provide technical assistance.



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Activities Pertaining to Water Resources

- Must show activities pertain to waters "within the borders of an Indian reservation."
- Describe Reservation and Reservation waters
- Provide Maps
- "Reservation" includes all land within the exterior boundaries
- In addition, trust land not within traditional exterior boundaries would be considered a de facto "reservation"
- Tribes that don't have a reservation with established boundaries can seek TAS for trust lands.



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CAPABILITY

- Description of previous management experience;
- Description of existing environmental programs being carried out;
- Description of the organization which will be carrying out the program;
- Description of technical and administrative capabilities of staff which will carry out program.



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MANAGEMENT PROGRAM ISSUES

- Tribe must have authority to carry out the activities proposed in the management plan. Section 319 is not a “delegation” of authority. A Tribe must have sufficient authority to implement each element of the management program.
- Management program must include a certification from the tribal attorney that the Tribe has adequate authority to implement the management program.

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MANAGEMENT PLAN ISSUES Public Involvement/Public Comment

- Management Program is submitted to EPA “after notice and opportunity for public comment.” Section 319(b)(1). The Tribe’s submittal should demonstrate compliance with this requirement and also include a response to comments.



Nonpoint Source Management Program: References

- References
- Appendices



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Nonpoint Source Assessment Report and Management Program: **FINAL STEPS**

- Submit completed NPS Assessment Report and Management Program Plan to your EPA Project Officer for review and approval
 - Some minor revisions may be required before approval of document
- Recommend revising and updating your NPS Assessment Report and Management Plan every 5 years (or sooner if major development or new environmental issues has occurred)
 - Use either CWA 106 funds or CWA 319 base funds

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